

## C.F.S. PLANNING CORPORATION

8383 Wilshire Boulevard, Suite 650, Beverly Hills, California 90211 / Phone: (213) 653-1500 / Tlx. 4720915

March 21, 1985

PERSONAL AND CONFIDENTIAL

Mrs. Mildred Lee  
Interstate Commerce Commission  
12th Street and Constitution Avenue, Northwest  
Recordation Division Room 2303  
Washington, D.C. 20001

Dear Mrs. Lee:

Enclosed please find documents pertaining to a purchase and lease of certain locomotives (the "Equipment") for recording with the ICC.

The Equipment was purchased by Mr. Karl B. McMillen, 14600 South Hindry Avenue, Hawthorne, California, 90250 from CFS Planning Corporation, 8383 Wilshire Boulevard, Suite #650, Beverly Hills, California, 90211. Mr. McMillen then leased the Equipment to CIS Leasing Corporation, 909 Montgomery Street, San Francisco, California, 94133.

The documents I have enclosed for recording are:

1. One original and one certified copy of the Agreement of Lease between Mr. McMillen and CIS Leasing Corp.
2. One original and one certified copy of the Assignment of Lease between Mr. McMillen and CIS Leasing Corp.
3. One original and one certified copy of the Collateral Assignment between Mr. McMillen and CIS Leasing Corp.
4. One Description of Equipment pertaining to the purchase of 12 locomotives for \$1,930,435 proposing cause to record.

RECORDATION NO. 14600 Filed 1425

MAR 25 1985 -3 05 PM

INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION


Mrs. Mildred Lee  
March 21, 1985

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I have enclosed a check for \$30.00 to cover the recording costs. Also, I have stamped the original documents "original"; these documents should be returned after the recording is completed.

Please contact me immediately if anything needed for recording has not been forwarded with this letter. Thank you for your assistance.

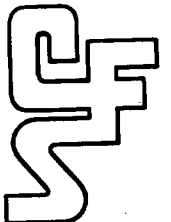
Yours truly,



Grace Greer  
Legal Department

Enc.

GG:sw



AGREEMENT OF LEASE

14600  
REGISTRATION NO. 1425

MAR 25 1985 -3 05 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT OF LEASE, (hereinafter the "Lease") by and between KARL B. McMILLEN, an individual with an office and place of business at 14600 South Hindry Avenue, Hawthorne, California 90250, ("Lessor") and CIS RAIL CORPORATION, a California corporation with an office and place of business at 909 Montgomery Street, San Francisco, California 94133, ("Lessee").

IN CONSIDERATION of the mutual agreements hereinafter set forth and the payment of Rent as hereinafter provided for, the parties hereto agree as follows:

1. DEFINITIONS

1.1 "Equipment". "Equipment" shall mean and refer to the Equipment, described in Exhibit "A" annexed hereto, which Lessor purchased from CPS PLANNING CORPORATION ("Seller") pursuant to a certain purchase agreement dated December 20, 1984 (the "Purchase Agreement").

1.2 "Fair Market Value". "Fair Market Value" shall mean and refer to the purchase price or rental that would be obtained in an arm's length transaction between an informed and willing buyer, or lessee, under no compulsion to buy or lease and

an informed and willing seller, or lessor, under no compulsion to sell or lease. If Lessor and Lessee are unable to agree upon the Fair Market Value of the Equipment, such value shall be determined, in accordance with the foregoing definition, by an independent appraiser to be mutually agreed upon by Lessor and Lessee or, failing such agreement, by a panel of three (3) appraisers, one selected by Lessor, one selected by Lessee and a third selected by the first two appraisers. The cost of such appraisal shall be borne by Lessee.

1.3 "Lease Term". "Lease Term" shall mean and refer to the term of this Lease as provided in Article 3 hereof.

1.4 "Liens". "Liens" shall mean and refer to collectively the Initial Purchaser's Lien, the Bank Lien and the Seller's Lien, as those terms are defined in the Purchase Agreement.

1.5 "Permitted Sublease". "Permitted Sublease" shall mean and refer to any sublease of the Equipment permitted pursuant to Section 9.1 hereof. The lessee under any such Permitted Sublease shall be referred to as the "Permitted Sublessee".

1.6 "Prime Rate". "Prime Rate" shall mean and refer to the prime rate established by the Bank of America NT&SA or, if

the Bank of America NT&SA has no established and published rate, the rate which major banks charge their corporate customers of highest credit rating.

1.7 "Rent". "Rent" shall mean and refer to the Base Rent, the Percentage Rent and the Additional Rent payable by Lessee to Lessor pursuant to Article 5 hereof.

1.8 "Base Rent". "Base Rent" shall mean and refer to the rent payable by Lessee to Lessor pursuant to Section 5.1 hereof.

1.9 "Percentage Rent". "Percentage Rent" shall mean and refer to the rent payable by Lessee to Lessor pursuant to Section 5.2 hereof.

1.10 "Additional Rent". "Additional Rent" shall mean and refer to the rent payable by Lessee to Lessor pursuant to Section 5.3 hereof.

1.11 "User Lease". "User Lease" shall mean and refer to the lease agreement by and between Lessor, as assignee of Seller, and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, (the "User"). A copy of the User Lease is annexed hereto as Exhibit "B".

2. PROPERTY LEASED

Lessor, as the owner of the Equipment, in consideration of the Rent to be paid by Lessee and the covenants and agreements of Lessee hereinafter set forth, hereby demises and lets to Lessee, subject and subordinate to the Liens, the Equipment, "AS IS" and "WHERE IS", and agrees to assign all of its right, title and interest in and to all payments due or to become due to Lessor under the User Lease (the "Assignment"). A copy of the Assignment shall be annexed hereto as Exhibit "C".

3. TERM

The term of this Lease shall be 198 months, commencing on December 20, 1984 (the "Commencement Date"); provided, however, that the Lease Term may be terminated pursuant to Section 13.2 and Article 14.

4. DELIVERY AND REDELIVERY

4.1 Delivery Of Equipment. Lessee is in possession of the Equipment as of the Commencement Date. Lessee acknowledges that the Equipment is in good order and, without further instrument of lease or transfer, is subject after the Commencement Date to all the terms and conditions of this Lease.

4.2 Redelivery of Equipment. Upon termination of this Lease, including termination pursuant to Section 13.2 or Article 14, Lessee shall immediately deliver or cause the delivery of possession of the Equipment to Lessor in the same state of repair and condition as on the Commencement Date, reasonable wear and tear excepted, and in a condition satisfactory for interchange service under the rules of the Association of American Railroads, or any successor; provided, however, if this Lease is terminated pursuant to Section 13.2, such redelivery of equipment shall be subject to (i) the rights of the User under the User Lease, and any renewal or extension thereof, or the rights of any Permitted Sublessee, and (ii) the interest of the Bank and of any lender or other financial institution permitted pursuant to Section 9.2 hereof.

For the purpose of delivering possession of the Equipment to Lessor as above required, Lessee shall, at its sole risk, cost and expense, (i) assemble the Equipment and place it upon such storage tracks provided by Lessee and reasonably acceptable to Lessor; (ii) permit Lessor to store such Equipment on such tracks until Lessor shall have leased, sold or otherwise disposed of the Equipment; provided, however, that such storage shall not exceed a period of six (6) months, (iii) transport the Equipment, at any time within such six (6) month period, to any place or places on the lines of railroad to any connecting carrier, all as directed by Lessor.



The assembling, delivery, storage and transporting of such Equipment, as set forth in this Section, are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so as to assemble, deliver, store and transport the Equipment.

During any storage period, Lessee will permit Lessor or any person designated by Lessor, including the authorized representative or representatives of any prospective purchaser or lessee of the Equipment, to inspect the Equipment, provided, that Lessor or persons designated by Lessor execute appropriate releases of liability for personal injury, in form provided by Lessee.

5. RENT

5.1 Base Rent. Lessee shall pay to Lessor, as Base Rent for the Equipment, Zero Dollars (\$0.00) for Months 1 through 12, Twenty-four Thousand Nine Hundred Sixty-seven Dollars And Ninety Cents (\$24,967.90) for Months 13 through 100 and Twenty-four Thousand Five Hundred Eighty-one Dollars And Eighty-one Cents (\$24,581.81) for Months 101 through 198 of the Lease Term, specified in Schedule 1 as "Rent".



5.2 Percentage Rent. Lessee shall pay to Lessor, as Percentage Rent in addition to the Base Rent set forth in Section 5.1, as follows:

(a) Fifteen percent (15%) of all rents actually received by Lessee, or paid to any third party on behalf of or for the credit of Lessee, from the sublease of the Equipment from April 1, 1993, through May 31, 1995, (Month 101 through 126 of the Lease Term).

(b) Fifty-five percent (55%) of all rents actually received by Lessee, or paid to any third party on behalf of or for the credit of Lessee, from the User Lease or any Permitted Sublease of the Equipment from June 1, 1995, through May 31, 1998, (Month 127 through 162 of the Lease Term).

(c) One Hundred percent (100%) of all rents actually received by Lessee, or paid to any third party on behalf of or for the credit of Lessee, from the User Lease or any Permitted Sublease of the Equipment from June 1, 1998, through May 31, 2001, (Month 163 through Month 198 of the Lease Term).

Within thirty (30) days after the commencement of any Permitted Sublease, Lessee shall deliver to Lessor a written schedule setting forth all rents due and payable over the term of such Permitted Sublease, and an accounting setting forth, in detail, its computation of Percentage Rent.

5.3 Additional Rent.

(a) Lessee shall pay, or cause to be paid, to the appropriate governmental authorities, any and all taxes, imposts, levies, duties, assessments, licenses, tolls, inspection or other fees, however designated, assessed or levied against, arising out of or in connection with the Equipment, Lessor's ownership of the Equipment, the delivery, return, leasing, use or operation thereof or upon the rentals or receipts with respect to this Lease, including all sales, use, value added and ad valorem taxes on personal property and any penalties or interest in connection therewith or amounts in lieu thereof, except penalties or interest arising out of the acts or failures to act of Lessor but not any act or failure to act of Lessee, paid or payable by Lessor with respect to the foregoing, but excluding taxes based on or measured by Lessor's net income. Lessee may, in good faith and at its sole cost and expense, contest, in any reasonable manner, the imposition of any such taxes, licenses, tolls, inspection or other fees, but only to

the extent that such contest does not adversely affect, or threaten to affect, the title of Lessor in the Equipment or impose any criminal or civil liability on Lessor. It is specifically understood and agreed that this Lease is intended to be a net lease, and as between Lessor and Lessee, Lessee shall be fully responsible for all costs and expenses of any nature whatsoever, arising out of or in connection with or related to this Lease or the Equipment. Lessee agrees to timely file, or cause to be filed, on behalf of Lessee and Lessor, all required tax returns and reports concerning amounts required to be paid by Lessee hereunder with all appropriate governmental agencies and to send Lessor copies and confirmation of such filings upon written request therefor.

(b) Lessor shall have the right, upon notice to Lessee, to cure any default or breach by Lessee hereunder, and the amount of all reasonable expenses incurred by Lessor in connection therewith shall be paid by Lessee, as Additional Rent, with the next monthly installment of Base Rent due and payable under this Lease following the giving of such notice unless such notice shall be given on or after the expiration or the termination of this Lease, in which event such amount shall be immediately due and payable by Lessee.

5.4 Payment of Rent. All Rent shall be due and payable on the fifteenth (15th) day of each month or, in the event that the fifteenth (15th) day is a bank holiday in Los Angeles, California, on the next succeeding banking day. All Rent shall be payable to Lessor in lawful money of the United States at its address set forth at the head of this Lease, or at such other place as Lessor may designate by written notice.

5.5 Obligation to Pay Rent. Lessee agrees that its obligations under this Lease are absolute and shall continue in full force and effect during the Lease Term regardless of any disability of Lessee to use the Equipment for reason whatsoever, except when due to the gross negligence of Lessor.

5.6 Past Due Amounts. Any monthly rental installment due and payable hereunder shall become delinquent if not paid on the due date, as established hereunder. Interest shall accrue on such delinquent amounts, or on any expense incurred by Lessor under Section 5.3(b) above, at the rate of one and one-half percent (1.50%) per month, or, if such rate shall exceed the maximum rate allowed by law, then at such maximum rate, from the date of delinquency to and including the date full payment is received by Lessor.

5.7 Security for the Payment of Rent. Lessee shall assign to Lessor all of its right, title and interest in and to

all payments due or to become due to Lessee under the User Lease and all subsequent subleases or rentals of the Equipment to Lessor (the "Collateral Assignment") to secure the performance of its obligations hereunder. A copy of the Collateral Assignment shall be annexed hereto as Exhibit "D".

6. MAINTENANCE

During the Lease Term, Lessee, at its sole cost and expense, shall keep or cause to be kept each item of Equipment in good working order and condition, and make or cause to be made all necessary adjustments, repairs and replacements thereto. Lessee shall, at its sole cost and expense, enter into and keep in force during the Lease Term, a maintenance agreement to maintain, service and repair the Equipment so as to keep it in as good operating condition as it was when it first became subject to this Lease, ordinary wear and tear excepted. The maintenance obligations of Lessee shall also include all maintenance obligations imposed on the User under the User Lease, which obligations are incorporated herein by this reference.

7. RISK OF LOSS: INSURANCE

7.1 Risk of Loss. Until the Equipment is returned to Lessor in accordance with Section 4.2 hereof, Lessee shall be



responsible for, and hereby relieves Lessor of responsibility for, all risk of physical damage to, or loss or destruction of, the Equipment, howsoever caused, unless caused by the gross negligence of Lessor. Upon the occurrence of any such event:

(a) Lessee shall make, or cause to be made, at its sole cost and expense, all repairs as shall be necessary to place such Equipment in the same condition and state of repair as it was immediately prior to the occurrence of such event and this Lease shall continue in full force and effect.

(b) In the event that an item of Equipment shall, as a result of any cause whatsoever, become lost, stolen, destroyed or rendered irreparably unusable, Lessee, at its sole cost and expense, shall promptly replace such item of Equipment (and convey title to such replacement equipment to Lessor free and clear of all leases, liens, equities and encumbrances whatsoever other than as permitted below), and this Lease shall continue in full force and effect as though such damage or destruction had not occurred. Such replacement equipment shall be an item or items of like kind equipment with associated maintenance features and devices reasonably satisfactory to Lessor (the "Replacement Equipment"), shall have a Fair Market Value at the time of such replacement and an estimated Fair Market Value at the

end of the Lease Term equal to, or greater than, the corresponding Fair Market Values of the Equipment replaced (the "Replaced Equipment") immediately prior to the damage or destruction requiring its replacement and shall have an "Asset Guideline Period" (as defined in the United States Treasury Regulations, Section 1.167(a)-11), equal to or less than the Asset Guideline Period of the Replaced Equipment.

Any item or items of Replacement Equipment may be subject to (i) the User Lease or any Permitted Sublease, and (ii) the Liens or any lien permitted under Section 9.2 hereof. Effective upon any replacement of Equipment in accordance with the provisions of this Section 7.1(b), all references to Equipment in this Lease shall be deemed to refer to the Replacement Equipment in lieu of the Replaced Equipment.

**7.2 Insurance.** During the Lease Term (and thereafter while the Equipment is being collected for delivery to Lessor on lines of railroad provided by Lessee, as set forth in Section 4.2 hereof, and so long as the Equipment shall be located thereon or stored by Lessee), Lessee shall, at its own cost and expense, keep or cause to be kept each item of Equipment insured, at not less than the full replacement value thereof, against loss by fire, collision, flood, windstorm and explosion, with extended coverage and against such other risks as are customarily insured against by companies owning property of a character similar to the Equipment. All such insurance shall cover the interest of



Lessor, Lessee, the Bank and any bank or financial institution permitted pursuant to Section 9.2 hereof, in the Equipment. The proceeds from any insurance policy or other recovery relating to any event which renders the Equipment unuseable shall be applied to the repair or replacement of the Equipment. If such proceeds shall not be sufficient to repair or replace the Equipment, the Lessee, at its expense, shall furnish such additional funds as shall be necessary to repair or replace the Equipment. In addition, Lessee shall maintain or cause to be maintained, at its expense, all risk public general liability insurance, with Lessor names as an additional insured, which shall protect Lessor against risks arising out of the condition, maintenance, use and operation of the Equipment, having limits for bodily injury or death of not less than Twenty-five Million Dollars (\$25,000,000) and limits for property damage occurring to the property of others of not less than Four Million Dollars (\$4,000,000), per occurrence; Lessee and any Permitted Sublessee may also be named as insureds. Lessee shall instruct all companies providing such insurance to send copies of all policies and notices to Lessor and all such policies shall entitle Lessor to at least ten (10) days prior written notice of cancellation.

Lessee may cause any sublessee to perform Lessee's obligations to maintain insurance hereunder provided such obligations are duly performed by such sublessee and such policies provide that losses shall be payable to such sublessee,

Lessee, Lessor and the parties holding any liens, as their respective interests may appear.

8. LESSEE TO HOLD HARMLESS

Lessee shall indemnify Lessor from and protect, defend and hold it harmless against, any loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees and court costs) by reason of any claim which is in any manner connected with the delivery, storage, transportation, use, condition, operation, possession, control or removal of the Equipment, howsoever arising and whether or not alleged to be attributed to any default or defect in the Equipment; provided, however, that Lessee shall be subrogated to all of Lessor's rights against third parties, including, but not limited to, the vendors or manufacturers or transporters of the Equipment, with respect to any such claims. Lessor shall give Lessee and Lessee shall give Lessor notice of any claim or liability with respect to which indemnification is provided for hereunder promptly after either learns thereof, and Lessee shall be entitled to participate in the defense thereof. Notwithstanding the foregoing, Lessee shall not be required to indemnify Lessor for any loss, cost, damage or expense (including attorneys' fees and court costs) arising out of or as a result of Lessor's gross negligence.

Lessee agrees that it will exercise and enforce for the Lessor's benefit, all rights, if any, against the manufacturer of, or any party who reconditions, the Equipment. If any action is brought against Lessee based on a claim that the Equipment infringes a United States patent, Lessee will promptly notify the manufacturer or the supplier thereof for purposes of exercising for the benefit of Lessor its rights against the manufacturer or the supplier under any such agreement or otherwise.

9. SUBLEASE OF EQUIPMENT; FUTURE FINANCING

9.1 Permitted Sublease of Equipment. Nothing contained herein shall limit or restrict Lessee's right to sublease any or all of the Equipment from time to time pursuant to the User Lease or otherwise, provided, that any such sublease and any right of renewal or extension provided for therein (i) shall not extend beyond the Lease Term; (ii) shall be a bona fide third party lease; (iii) shall be written with a sublessee having a credit rating at least the equivalent of a Moody's "Baa" rating or otherwise acceptable to Lessors; (iv) shall contain a provision confirming the fact that Lessor is the owner of the Equipment and providing and confirming that Lessee has assigned rentals under the sublease to Lessor pursuant to the Collateral Assignment; (v) shall provide that the sublease is subject and subordinate to this Lease; and (vi) shall contain all provisions in favor of Lessee, as sublessor, which are typically contained in the lease

form used by Lessee or major leasing companies in general. Lessee shall furnish Lessor with complete copies of each such sublease and all documents executed and delivered in connection therewith.

9.2 Future Financing. Lessee may wish to obtain financing, secured by its interest in this Lease and by any Permitted Sublease, upon or after the termination of the User Lease and retirement of the Bank Lien. Lessor hereby agrees to permit Lessee to grant a security interest in its interest in this Lease and any Permitted Sublease to facilitate such new financing provided the amount of new financing is not greater than the present value of the non-cancellable rental payments due or to become due from the subsequent Permitted Sublessee pursuant to the Permitted Sublease determined by the use of a discount percentage equivalent to the interest rate under such new financing ("Discounted Rent"); provided, however, Lessor is paid, by lender upon disbursement of loan proceeds, the amount, similarly discounted, corresponding to all amounts it would receive hereunder as Percentage Rent upon Lessee's receipt of such non-cancellable rental payments.

9.3 No Release. Notwithstanding anything set forth in this Lease, neither the failure of Lessee to obtain any financing contemplated hereby nor Lessor's refusal to consent to such loan shall release Lessee from any of its obligations to

Lessor under this Lease or any other document contemplated hereby.

10. PROTECTION OF TITLE

Lessee acknowledges and agrees that by the execution of this Lease it does not have or obtain, and by payment and performance hereunder it does not and will not have or obtain, any title to the Equipment, nor any property right or interest, legal or equitable, therein, or any purchase right or option, except as expressly set forth in this Lease. Lessee further agrees that it will at all times (i) protect and defend, at its own cost, the title and interest of Lessor in and to the Equipment from and against any and all claims, liens, charges, encumbrances, and legal processes of Lessee's or any sublessee's creditors or other persons having claims against Lessee, any sublessee or the Equipment, (ii) keep each item of Equipment free and clear of any such claims, liens, security interests, charges, encumbrances and processes, except as expressly permitted herein, and (iii) confirm and warrant the title of Lessor to the Equipment and the interest of Lessor by such instruments of further assurance as it shall reasonably be requested to execute.

Lessee will cause to be maintained distinctly and conspicuously, at all times, in letters not less than one inch in height on each side of each item of the Equipment, language



clearly identifying Lessor as the Owner of the Equipment. Furthermore, Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership thereof by any person other than Lessor; provided, however, that Lessee may letter the Equipment with such names or initials or other insignia as are customarily used by Lessee, User or any Permitted Sublessee on its identification of the right of Lessee, User or any Permitted Sublessee to use and operate the Equipment under this Lease.

Lessee will not permit the identifying number of any item of the Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement shall have been previously recorded pursuant to Section 27 hereof.

#### II. USE OF THE EQUIPMENT

Lessee covenants to cause each item of the Equipment, at all times during the Lease Term, to be used and operated under and in compliance with all applicable laws, ordinances, orders and regulations of the jurisdictions in which such item may be operated; provided, however, that Lessee may in good faith contest, at its own expense, in any reasonable manner, the application of any such rule, regulation or order if such

contest or the result of non-compliance during the pendency thereof does not adversely affect or threaten to affect the title of Lessor to any item of Equipment or subject Lessor to any criminal or civil liability whatsoever.

12. RIGHT OF EXAMINATION; REPORTS

Lessee agrees that, during the Lease Term, it will permit Lessor or its agents and representatives to make such examination during normal business hours of the Equipment as Lessor may reasonably request, and, upon request, shall confirm to Lessor the location of the Equipment and shall facilitate such examination; provided, however, that any such right of examination shall be made in conformity with the provisions of the User Lease or any Permitted Sublease. Lessee shall furnish Lessor with such information concerning the Equipment, the Rent, the Liens and any lien permitted under Section 9.2 hereof, as Lessor may, from time to time, reasonably request.

13. EVENTS OF DEFAULT

13.1 "Event of Default". "Event of Default" shall mean and refer to any of the following events:

- (a) If Lessee shall be late in the payment of any installment of Rent by more than (i) ten (10) days, or (ii)



more than three (3) days in either of the two (2) months following a month in which Lessee was more than ten (10) days late in paying Rent.

(b) If Lessee shall (i) default in the payment, performance or observance, when due, of any other covenant, agreement or obligation of Lessee to Lessor hereunder or otherwise relating in any manner to the purchase or leasing of the Equipment or (ii) have made any material misrepresentation or materially breached any warranty, covenant or agreement material to Lessor hereunder and such default, misrepresentation or breach shall continue for a period of ten (10) days after written notice.

(c) If Lessee shall assign, mortgage or encumber its interest under this Lease, voluntarily or otherwise, in violation of the provisions of this Lease.

(d) If any holder of the Liens or any lien permitted under Section 9.2 hereof, shall seek to accelerate its indebtedness or enforce its lien against the Equipment or User Lease by reason of default thereunder and Lessee shall fail to cure such default before the third (3rd) business day prior to the end of the applicable grace period, including any extensions thereof obtained by Lessee.

(e) If Lessee shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver for itself or for the whole or any substantial part of its property, (v) on a petition in bankruptcy filed against it, be adjudicated a bankrupt, or (vi) file a petition or answer seeking reorganization or arrangement under the bankruptcy laws or debtor law of any other authority having jurisdiction for the relief of debtors.

(f) If a court or other body or agency of competent jurisdiction shall enter an order, judgment or decree appointing, with or without the consent of Lessee, a receiver for Lessee or the whole or any substantial part of its property, or approving a petition filed against it seeking reorganization or arrangement of Lessee under any bankruptcy or insolvency laws or any other state or federal law for the relief of debtors, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry thereof.

(g) If under the provisions of any other law for the relief of debtors, any court of competent jurisdiction

shall assume custody or control of Lessee or of the whole or any substantial part of its property, with or without the consent of Lessee, and such custody or control shall not be terminated or stayed within sixty (60) days from the date of assumption of such custody or control.

(h) If Lessee shall accept prepayment of any rent due from any sublessee when similar amounts are to be paid to the holders of the Liens or any lien permitted by Section 9.2 hereof, if any, without simultaneously paying the same to the holders of the Liens or any lien permitted under Section 9.2 hereof, if any, in reduction thereof.

13.2 Remedies. If an Event of Default occurs and is continuing, Lessor, at its option, subject to the rights of any Permitted Sublessee, may (i) by written notice to Lessee terminate this Lease; (ii) whether or not this Lease is so terminated, take immediate possession of any or all of the Equipment wherever situated, and for such purposes, enter upon any premises without liability for so doing; (iii) sell, dispose of, hold, use or lease any or all of the Equipment as Lessor in its sole discretion shall decide, without any duty to account to Lessee; (iv) declare immediately due and payable all monies due to be paid by Lessee during the Lease Term, including, without limitation, all Rent, and thereupon Lessee shall be obligated to pay such monies to Lessor immediately, less a discount by reason

of the acceleration of payment thereof, calculated at the Prime Rate, compounded monthly, on the average balance of such amounts which would otherwise remain outstanding over the Lease Term; provided, however, that Lessor shall not interfere with the possession and use of the Equipment by User or any Permitted Sublessee of the Equipment so long as User or any Permitted Sublessee, as the case may be, shall not be in default of the User Lease or any Permitted Sublease, as the case may be, and provided that the amount of rent payable under such Permitted Sublease and the obligations of the Permitted Sublessee thereunder are not less than Lessee's obligations to Lessor under this Lease. Lessee shall in any event remain fully liable for damages as provided by law and for all costs and expenses incurred by Lessor on account of the pertinent Event or Events of Default, including, without limitation, all court costs and reasonable attorneys' fees.

#### 14. TERMINATION OF LEASE

Notwithstanding the provisions of Section 13.2 above, Lessor may, at its option, terminate this Lease with respect to any item of Equipment provided that (i) the initial term of the User Lease which the Equipment was subject to has expired, and (ii) Lessor has given at least one hundred eighty (180) days prior written notice to Lessee specifying the date of such termination.

15. INDEMNIFICATION

Lessee hereby indemnifies and holds Lessor harmless from and against any liability, obligation, loss, claim, damage, penalty, action, cost and expense (including reasonable attorneys' fees) of any kind and nature (collectively "Liabilities") imposed upon, incurred by or asserted against Lessor in any way relating to or arising out of this Lease, the Equipment, the leasing, subleasing, use, operation and maintenance thereof, and any claim by the respective holders of the Liens, by the holder of any lien created pursuant to Section 9.2 hereof or by any Permitted Sublessee except for any Liabilities resulting from Lessor's gross negligence.

In the event any claim for indemnification hereunder arises on account of a claim or action made or instituted by a third person against Lessor, Lessor shall promptly notify Lessee after the receipt by Lessor of notice that such claim was made or that such action was commenced. Lessee shall be entitled to participate in or, at its option, assume the defense of any such claim or action and, if it assumes such defense, to control and settle the same. If Lessee shall only participate in the defense of such claim or action, the same shall not be settled without Lessee's prior written consent, which consent shall not be unreasonably withheld. Unless such claim or Liability is covered



by insurance, Lessee shall provide Lessor with reasonable security against the reasonably anticipated recovery therein or permit Lessor joint control of the defense thereof.

16. DISCLAIMER OF WARRANTIES

THE EQUIPMENT IS BEING LEASED HEREUNDER "AS IS" AND "WHERE IS". ACCORDINGLY, EXCEPT AS SET FORTH HEREIN, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE SELECTION, QUALITY OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS SUITABILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE OPERATION OR PERFORMANCE OF THE EQUIPMENT OR THE MAINTENANCE THEREOF. LESSOR SHALL, IN NO EVENT, BE LIABLE TO LESSEE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES CAUSED, DIRECTLY OR INDIRECTLY, BY THE EQUIPMENT OR ANY INADEQUACY THEREOF FOR ANY PURPOSE, OR ANY DEFICIENCY OR DEFECT THEREIN, OR THE USE OR MAINTENANCE THEREOF, OR ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO.

17. COURSE OF DEALING

No course of dealing of Lessor nor any delay or omission of Lessor to exercise any right or remedy granted under this Lease shall operate as a waiver of any rights of Lessor, and every right and remedy of Lessor provided for herein shall

be nonexclusive, cumulative and concurrent, unless otherwise expressly provided herein, and shall be in addition to every other right or remedy provided for herein or now or hereafter existing in law or in equity or by statute or otherwise. The exercise or attempted exercise by Lessor of any such rights or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all other such rights or remedies. Such rights or remedies may be exercised from time to time and as often as shall be deemed expedient.

18. PERFORMANCE BY LESSEE

Lessee agrees to perform all its obligations as lessor under the User Lease or any Permitted Sublease and under the Bank Loan, as defined in the Purchase Agreement, or any subsequent loan made pursuant to Section 9.2 hereof, unless failure to perform is waived by the party entitled to such performance.

19. PERFORMANCE BY SUBLESSEE

Performance by User or any Permitted Sublessee of the obligations and duties of Lessee hereunder shall be deemed to be performance thereof by Lessee.



20. NO PERSONAL LIABILITY UPON LESSOR

This Lease shall be non-recourse with respect to Lessor and Lessor shall have no personal liability for any money damages or payment under this Lease.

21. FURTHER ASSURANCES

Each party hereto shall execute and deliver all such further instruments and documents as may reasonably be requested by the other party in order to fully carry out the intent and accomplish the purposes of this Lease and the transactions referred to herein.

22. AMENDMENTS

This Lease may not be altered, amended or modified except by written amendment signed by the party adversely affected.

23. SUCCESSORS AND ASSIGNS

All covenants and agreements contained in this Lease shall bind the successors, assigns and transferees of Lessee and Lessor and shall inure to the benefit of the successors, assigns and transferees of Lessee, to the extent assignment is permitted

hereunder, and Lessor, in the same manner and to the same extent, and with like effect as if such successors and assigns were named in such covenants and agreements and were made parties to this Lease. Except as provided for in this Section, nothing contained in this Lease is intended to create any rights in any third persons, including, without limitation, the User, any Permitted Sublessee and any persons claiming through or under the User Lease or any Permitted Sublease.

24. NOTICES

Any notice, request or other communication hereunder shall be in writing and shall be delivered either (i) personally to the party or any officer or employee of the party or (ii) by certified or registered mail, return receipt requested, first-class postage prepaid and addressed to the party at the most recent address furnished by such party to the other. Such notices shall be deemed delivered (i) on the date actually received or (ii) four (4) business days after mailing, whichever is earlier.

25. SEVERABILITY

The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion

thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

26. GOVERNING LAW

This Lease shall be governed by, and interpreted under, the laws of the State of California applicable to contracts made and to be performed therein, without giving effect to the principles of conflict of laws. Except with respect to an action commenced by a third party in another jurisdiction, Lessor and Lessee agree that any legal suit, action or proceeding arising out of or relating to this Lease must be instituted in a state or federal court in the County of Los Angeles, State of California, and they hereby irrevocably submit to the jurisdiction of any such court.

27. RECORDATION OF DOCUMENT

This Lease shall be acknowledged by the parties hereto and subsequently recorded with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code, as soon as reasonably possible after the execution of this Lease.

28. CAPTIONS

The captions used herein are inserted for reference purposes only and shall not affect the interpretation or construction of this Lease.

29. COUNTERPARTS

This Lease may be executed in one or more counterparts, each of which together shall be deemed an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of this 20th day of December, 1984.

LESSOR:

KARL B. McMILLEN,  
an individual

By: Karl B. McMillen  
(Authorized Signatory)

LESSEE:

CIS RAIL CORPORATION,  
a California corporation

By: [Signature]  
(Authorized Signatory)